

February 8, 2021

FTC, DOJ Announce Suspension of HSR Early Termination

The Federal Trade Commission (“FTC”) and Department of Justice (“DOJ”) announced on February 4 that they have suspended the practice of granting early termination of the review period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), effective immediately. The announcement occurs in the midst of other proposals to reform the HSR Act and antitrust laws generally.

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In a joint statement, the agencies announced that they intend to review the procedures for granting early termination, an option commonly used for transactions that do not raise competition issues. Rebecca Kelly Slaughter, Acting Chairwoman of the FTC, stated that the FTC has “an obligation to be responsive” to the current circumstances facing the agencies—high volumes of HSR filings, the ongoing COVID-19 emergency, and the transition to a new administration. The FTC’s two Republican Commissioners issued a statement of dissent with their agency’s action, arguing that the FTC and DOJ are capable of handling the current volume of notifications, and that suspension of early termination “introduces inefficiency into market operation, harming consumers and other stakeholders[.]”

The HSR Act requires parties to notify the FTC and DOJ prior to consummating mergers and acquisitions that cross certain thresholds. Upon filing, the agencies have 30 days to review the notifications and, at their discretion, request additional information from the parties. If the parties so request, the agencies have discretion to terminate this review period in less than 30 days, resulting in the publication of the names of the parties on the FTC’s website and Twitter page as well as the Federal Register.

Suspension of the early termination process is rare, and historically only occurs during government shutdowns, when federal law requires that agencies stop certain non-urgent processes. However, the FTC did briefly halt the use of early termination in March 2020 while it implemented a new electronic filing system in response to the COVID-19 pandemic.

The suspension of early termination arrives amidst a variety of proposed changes to U.S. antitrust law. In late 2020, the FTC and DOJ published notices of proposed rulemaking that introduce changes to the criteria for the HSR Act’s “investment-only” exemption, along with a broad set of changes to how investment firms report their existing holdings. Furthermore, Sen. Amy Klobuchar is set to introduce the Competition and Antitrust Law Enforcement Reform Act (CALERA), which includes significant changes to merger litigation procedures under the Clayton and Sherman Antitrust Acts. Notably, CALERA would lower the burden of proof for antitrust enforcers when challenging mergers, and in some cases would shift the burden to transacting parties to prove that a deal does not harm competition.

For additional information regarding HSR procedures and reporting requirements, please feel free to contact any member of Ropes & Gray’s [Antitrust](#) Practice Group.